

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:16-CR-224
)	
Plaintiff,)	
v.)	JUDGE PATRICIA A. GAUGHAN
)	
BOGDAN NICOLESCU, et al.)	
)	
)	UNITED STATES OF AMERICA’S
)	OPPOSITION TO DEFENDANTS’
Defendant.)	SECOND MOTION FOR EXTENSION
)	OF TIME TO FILE RESPONSES

Now comes the United States of America, by its counsel, Justin E. Herdman, United States Attorney, Duncan T. Brown and Brian M. McDonough, Assistant United States Attorneys, and Brian L. Levine, Senior Counsel for the U.S. Department of Justice, and hereby submits this Opposition to Defendants’ Second Motion for Extension of Time to File Replies.

BACKGROUND

Hearsay Motion. The Motions Deadline in this case is February 25, 2019. The United States voluntarily agreed to file and did file its hearsay motion by December 31, 2018, with the defendants’ deadline to respond being January 4. On January 7, 2019, the Court granted the defendants’ request for a 30-day extension, permitting them to respond by February 4. On January 14, 2019, the Court moved up the trial by three days. Yesterday, February 4, 2019, the defendants requested another 24-day extension, which would take us to 25 days before trial.

Authentication Motion. The United States voluntarily agreed to file its authentication motion by January 31, 2018—almost a full month before the Motions Deadline. The United States actually filed that motion on January 22, 2019—nine days early (providing defendants double the amount of time to respond). The Authentication Motion contains no new exhibits, or

attachments. Defendants' date to file a response is February 7, 2019. Yesterday, the defendants requested another 24-day extension, which would take us to 25 days before trial.

DISCUSSION

In Defendants' Second Motion for Extension of Time to File Replies, Defendants make the naked assertion that "undersigned counsel does not believe the Government will suffer prejudice if the herein requested extension is granted." Dkt. 110 at 2. The Government respectfully disagrees. The Government voluntarily filed its motions months before the Motions Deadline for at least three reasons: (1) to give the Government an opportunity to file a reply, if necessary; (2) to give the Court sufficient time to rule on the motions before trial; and (3) to give the Government sufficient time to procure additional witnesses or cure any defect necessitated by the Court's ruling. While the Government did not oppose an initial extension of time to reply, this second extension would strongly prejudice the government because it will make it less likely that the government will be able to achieve any of these goals. Indeed, the further extension the defendants seek may make it impossible for the government to cure any defects that the Court may identify in its ruling.

At the same time, the defendants have provided virtually no explanation for their need for additional delay. Defendants' argument is limited to the assertion that there are 2,400 exhibits. Defendants fail to acknowledge, however, that (a) the government is not even seeking to admit hundreds of those exhibits; (b) hundreds more are photographs or physical objects; and (c) the vast majority of the rest of the exhibits are non-controversial because, if they are statements at all, they are statements of a party opponent and/or in furtherance of the conspiracy.

Defendants should be required to file their responses by **Friday, February 8, 2019**, of this week.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2019, a copy of the foregoing Motion *in Limine* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Brian L. Levine

Brian L. Levine
Senior Counsel